

Remarks

In the Final Office Action, the Examiner noted that claims 1-13, 22-26 and 31-50 are pending in the application with claims 1, 10, 13, 23, and 26 being independent claims and claims 10-13, 22-26 and 31-39 being allowed. By the foregoing amendments, claims 1 and 2 are currently amended. These changes are believed not to introduce new matter and their entry is respectfully requested.

Rejection under 35 U.S.C. § 112

Claims 1-9 and 40-50 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner contends that there is a lack of antecedent basis in Claim 1 for the recited limitation of “said notch” in line 5 of Claim 1. Additionally, the Examiner seeks further clarification of Claim 1 regarding the “means for vertically adjusting and rigidly fixing a height of the scraper blade” in line 12 of Claim 1. Claims 2-9 and 40-50 depend either directly or indirectly from independent Claim 1.

In response, Applicant respectfully directs the Examiner’s attention to the first element of Claim 1 beginning on line 4 which states in pertinent portion: “...each notched receiving member having **a notch** formed from a front vertical stabilizer and a rear vertical stabilizer, **said notch** for receiving ...” (Emphasis added). In view of MPEP 2173.05(e) Lack of Antecedent Basis and in careful reading of Claim 1, Applicant respectfully submits that the claim properly contains an earlier recitation or limitation to “**said notch**” found in line 5 as the claim expressly has an antecedent basis in “each notched receiving member having **a notch**” beginning line 4 and continuing to line 5. (Emphasis added). Thus, Applicant also respectfully submits that it is evident as to the specific element the limitation of “said notch” is making reference - which is to the preceding term “a notch.”

Accordingly, Applicant contends that given the express language and scope of the claim, the recitation to “said notch” is reasonably ascertainable by those skilled in the art and thus Claim 1 is

not indefinite. (See MPEP 2173.05(c) citing *Ex parte Porter*, 25 USPQ 1144, 1145 (Bd. Pat. App. & Inter. 1992)) Applicant further suggests that no further action is necessary to advance the prosecution of the application in response to the Examiner's rejection for lack of antecedent basis in Claim 1 in view of a careful reading of the claim. Claim 1 properly recites the limitation "said notch" in line 5 in view of "a notch" beginning in line 4 of Claim 1.

In further response to the Examiner's rejection of **Claim 1**, Applicant has amended independent Claim 1 to clarify any ambiguity. Specifically, the Examiner suggested that clarification is required of the "means for vertically adjusting and rigidly fixing a height of the scraper blade" in line 12 of Claim 1 in questioning "[h]ow can the means both adjust and fix?" In reply, Applicant has removed the wording "and rigidly fixing" from the third element of Claim 1 and added language such that Claim 1 now reads in pertinent part:

"a means for vertically adjusting ~~and rigidly fixing~~ a height of the scraper blade in relation to a fixed position of said pair of notched receiving members and said face plate such that the scraper blade is rigidly fixed at a selected height and is in contact with a surface of the conveyor belt to be scraped."

Applicant asserts that this amendment is not indefinite, addresses those matters identified by the Examiner, and importantly, does not add any new matter or otherwise alter the scope of the claim.

"The test for definiteness under 35 U.S.C. 112, second paragraph is whether 'those skilled in the art would understand what is claimed when the claim is read in light of the specification.'" MPEP § 2173.02 (quoting *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986)). "The fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph." MPEP §2173.05(b) (citing *Seattle Box Co. v. Industrial Crating & Packing, Inc.*, 731 F.2d 18, 221 USPQ 568 (Fed. Cir. 1984)). Claims are allowable where they "define the patentable subject matter with a reasonable degree of particularity and distinctness." MPEP § 2173.02. (emphasis added).

As a reminder, the present invention uses a scraper blade that, after vertical adjustment, remains fixed in a selected position relative to the notched receiving members and the face plate. One of the features of the present invention is “vertical blade stabilizers on the notched receiving members for **anchoring** the scraper blade **securely in place**.” *Application*, Page 4, Lines 20-21 (emphasis added). The present invention is not designed to permit dynamic movement of the scraper blade up and down in relation to the notched receiving members or face plate during the cleaning process. Thus, the present invention allows a user to vertically adjust the height of the scraper blade, and then once a selected height is obtained, to rigidly fix the scraper blade at that selected height.

For the foregoing reasons, withdrawal of the §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter rejection of amended Claim 1 is therefore respectfully requested. Applicant respectfully submits that amended Claim 1 is in proper condition for allowance.

Regarding Claim 2, Applicant has amended dependent Claim 2 such that its wording corresponds to the amended wording of independent Claim 1 from which it depends. Thus, the pertinent portion of Claim 2 now reads, “The blade support sub-assembly according to claim 1, wherein said means for vertically adjusting ~~and rigidly fixing~~ a height of the scraper blade ...”.

Applicant asserts that this amendment is not indefinite and removes the confusion identified by the Examiner. Additionally, the amendment is logically consistent with independent Claim 1. Applicant submits that the amendment to Claim 2 merely eliminates inconsistent wording within the claims and does not add new matter. Entry is therefore respectfully requested

Regarding dependent claims 2-9, as well as dependent claims 40-50, it is well established in patent law “that allowance of a parent or base claim as patentable normally results in allowance of a claim dependent upon that claim.” *See* DONALD S. CHISUM, CHISUM ON PATENTS § 7.04[2]; *U.S. v. Telectronics, Inc.*, 658 F. Supp. 579, 591, 3 USPQ2d 1571, 1580 (D. Colo. 1987), *aff’d in part and rev’d in part*, 857 F.2d 778, 8 USPQ2d 1217 (Fed. Cir. 1988), *cert. denied*, 109 S. Ct. 1954 (1989) (“Since it would not have been obvious to have made the invention defined in claim 1, ... it would not have been obvious to make the inventions defined in dependent claims 3, 4 and 5.”); *In*

re Fine, 837 F.2d 1071, 1076, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (“Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.”).

Claims 2-9 and 40-50 depend directly or indirectly from independent Claim 1. As discussed above, Applicant respectfully submits that independent Claim 1 is in proper condition for allowance. Thus, Applicant respectfully submits that dependent Claims 2-9 and 40-50 are also in proper condition for allowance.

Withdrawal of the § 112, second paragraph rejection of Claims 1-9, and 40-50 is respectfully requested. Applicant has amended Claim 1 to overcome the rejection under 35 U.S.C. § 112, second paragraph, as explained above. As dependent Claims 2-9 and 40-50 depend directly or indirectly from Claim 1, and as amended independent Claim 1 has been amended to resolve the matters identified by the Examiner and fully responsive to those matters, Applicant asserts that the Examiner’s objection to claims 1-9 and 40-50 has been rendered moot. Applicant asserts that a person skilled in the relevant art would understand what is claimed in these claims. Therefore, Claim 1 and claims 2-9 and 40-50 which depend therefrom define patentable subject matter with a reasonable degree of particularity and distinctness, and that they are therefore not indefinite.

Withdrawal of the §112 rejection of claims 1-9 and 40-50 is therefore respectfully requested.

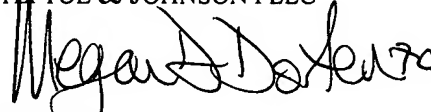
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Response is respectfully requested.

Respectfully submitted,

STEPTOE & JOHNSON PLLC

A handwritten signature in black ink, appearing to read "Megan D. Dortenzo", written over the printed name.

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